

STAFF PROPOSED REVISIONS TO DRAFT REGULATIONS
INCLUDING SUMMARY OF COMMENTS AND RATIONALE FOR CHANGES

I. DELTA PLAN POLICIES/ REGULATIONS	
<p>Policy No. G P1 - Detailed Findings to Establish Consistency with the Delta Plan. / §5004 §5002</p> <p>Summary of comments:</p> <p>The Council received 41 comments from 16 different stakeholders including, state agencies, local government agencies, water agencies, Delta interest groups and environmental interest groups.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">Stakeholders commented on the Council’s requirement that if the covered action is not exempt from CEQA, it must include applicable mitigation measures identified in the Delta Plan EIR.Stakeholders questioned the Council’s requirement that all covered actions use best available science.Several stakeholders suggested new language to describe when compliance with Section §5004 §5002 (GP 1) was required.Stakeholders questioned the authority of the Council to prevent implementation of a covered action if an appeal of the covered action’s certification of consistency is upheld by the Council.Staff also received numerous unique stakeholder-specific comments. <p>Comments received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">Several stakeholders commented that the Council’s requirement that covered actions must be consistent with the Delta Plan and the coequal goals created confusion. They asserted that that the current regulatory language requires that covered actions must be consistent with the coequal goals and the regulatory policies of the Delta Plan, implying that it may be possible to be consistent with the Delta Plan and inconsistent with the coequal goals.The Department of Fish and Wildlife commented that language in the Delta Plan narrative stating that conservation measures implemented pursuant to an existing Natural Community Conservation Plan (NCCP) are consistent with the Delta Plan is not present in the regulatory sections.Stakeholders questioned the regulation’s requirement that covered actions’ compliance with other applicable laws must be documented as part of certification of consistency.	
Staff Recommendation on Revisions to Proposed Regulations	Nature of Changes and Staff Rationale
<p>(a) This policy specifies what must be addressed in a certification of consistency filed by a state or local public agency with regard to a covered action. This policy only applies after a “proposed action” has been determined by a state or local public agency to be a covered action because it is covered by one or more of the regulatory policies contained in Article 3. Inconsistency with this policy may be the basis for an appeal.</p> <p>(b) Certifications of consistency must include detailed findings that address each of the following requirements:</p> <p>(1) Covered actions, <u>in order to must be consistent with the Delta Plan</u>coequal goals, must be consistent as well as with this each of the regulatory policy and with each of the regulatory policies contained in Article 3 implicated by the covered action. The Delta Stewardship Council acknowledges that in some cases, based upon the nature of the covered action, full consistency with all relevant <u>regulatory</u> policies may not be feasible. In those cases, the agency that files the certification of consistency may <u>nevertheless</u> determine that the covered action is consistent with the Delta Plan <u>because on whole, that action is consistent with the coequal goals</u>. That determination must include a clear identification of areas where consistency <u>with relevant regulatory policies</u> is not feasible, an explanation of the reasons why it is not feasible, and an explanation of how the covered action nevertheless, on whole, is consistent with the coequal goals. That determination is subject to review by the Delta Stewardship Council on appeal;</p> <p>(2) Covered actions not exempt from CEQA must include applicable feasible mitigation measures identified in the Delta Plan’s Program Environmental Impact Report (unless the measure(s) are within the exclusive jurisdiction of an agency other than the agency that files the certification of consistency), or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective;</p> <p>(3) As relevant to the purpose and nature of the project, all covered actions must document use of best available science (as described in Appendix 1A);</p> <p>(4) Ecosystem restoration and water management covered actions must include adequate provisions, appropriate to the scope of the covered action, to assure continued implementation of adaptive management. This requirement shall be satisfied through both of the following:</p> <p>(A) An adaptive management plan that describes the approach to be taken consistent with the adaptive management framework in Appendix 1B; and</p>	<ul style="list-style-type: none">Modify this language to clarify that covered actions need to be consistent with the Delta Plan, which is consistent with the statutory language of the Delta Reform Act.Technical Revision

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<p>(B) Documentation of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process.</p> <p><u>(c) A conservation measure proposed to be implemented pursuant to a natural community conservation plan or a habitat conservation plan that was:</u></p> <p><u>(1) Developed by a local government in the Delta, and;</u></p> <p><u>(2) Approved and permitted by the Department of Fish and Wildlife prior to the date of the Delta Plan’s adoption</u></p> <p><u>Is presumed to be consistent with Sections 5007 5005 through 5011 5009 of this chapter if the certification of consistency filed with regard to the conservation measure includes a statement confirming the nature of the conservation measure from the Department of Fish and Wildlife.</u></p> <p><u>(5) If the agency that files the certification of consistency will carry out the covered action, the certification of consistency must also include a certification from that agency that the covered action complies with all applicable laws pertaining to water resources, biological resources, flood risk, and land use and planning. If the agency that files the certification of consistency will not carry out the covered action (but will approve or fund the action), the certification of consistency must include a certification from that agency that the covered action complies with all applicable laws of the type listed above over which that agency has enforcement authority or with which that agency can require compliance.</u></p> <p>NOTE: Authority cited: Sections 85210(i), Water Code.</p> <p>Reference: Sections 85225, 85020, 85054, 85302(g) and 85308, Water Code.</p> <p>Article 3. Consistency with the Regulatory Policies Contained in the Delta Plan.</p>	<ul style="list-style-type: none">• Include new regulatory language, consistent with language in the Delta Plan narrative that clarifies how local NCCP conservation measures can be found consistent with the regulatory sections.• Remove this language. Agencies filing certifications of consistency will comply with all applicable laws by demonstrating the receipt of applicable permits.
<p>Policy No. WR P1 – Reduce Reliance on the Delta through Improved Regional Water Self-Reliance / §5005 §5003</p> <p><u>Summary of comments:</u></p> <div><div><p>The Council received 90 comments on this section from 35 different stakeholders including water agencies, environmental groups, state agencies, federal agencies, local governments and individuals.</p><p>Comments received that do not result in staff recommended changes in this section:</p><ul style="list-style-type: none">• Stakeholders, primarily water agencies, interpreted the rule as an assertion of authority by the Council to address actions outside of the Delta through the covered action review process.• Stakeholders asserted the Council was improperly interfering with local water management decisions, was proposing improper as well as inappropriate performance measures, and improperly including implementation and reporting requirements as part of the regulation.• Some stakeholders, primarily environmental groups, urged the Council to do more to limit exports from the Delta, and questioned whether the Council had sufficiently used its authority to require those that receive Delta water as a result of the export, transfer or use to reduce their reliance on this water, or questioned the effectiveness of the regulation to reduce reliance on Delta water exports.</div><div><p>Comments received that staff recommends should be addressed by changes in this section:</p><ul style="list-style-type: none">• Some stakeholders commented that subsections (a) and (b) created confusion because the preamble language was not intended to have regulatory effects. Several stakeholders limited their comment to subsection (a). Many of these stakeholders recommended that subsections (a) and/or (b) be deleted from the regulation.• Several stakeholders commented that the inclusion of the words “Delta watershed” in subsection (a) implied that the regulation applied to water suppliers upstream of the Delta, and that this was inconsistent with the provisions of the Delta Reform Act.• Several stakeholders commented on the language in the performance measure that specified “the significant reduction in the amount of water used... from the Delta” and questioned whether this was an appropriate performance measure or how this reduction would be evaluated.• Several stakeholders commented that water suppliers within the Delta or upstream of the Delta would not be able to comply with the performance measures for reduced reliance and improving regional self reliance due to limited access to alternative water supplies.• Several stakeholders requested that the regulation be modified to include clarifying language from Water Code Section 1011(a), which states that water efficiency is considered a new source of water supply.• Several stakeholders requested non-substantive language changes to the regulation for how the Urban and Agricultural Water Management Plans are referenced and to add to the list of programs and projects that could reduce reliance on the Delta.</div></div>	

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<p><u>Strikeout becomes part of Delta Plan Narrative</u></p> <p>(a) The policy of the State of California is to reduce reliance on the Delta in meeting future water supply needs and that each region that depends on water from the Delta watershed shall improve its regional self-reliance. Success in achieving the statewide policy of reduced reliance on the Delta and improving regional self-reliance will be demonstrated through a significant reduction in the amount of water used, or in the percentage of water used, from the Delta watershed.</p> <p>(b) The intent of the policy set forth in subsection (c) is to ensure that urban and agricultural water suppliers are taking appropriate actions to contribute to the achievement of reduced reliance on the Delta by complying with the statutory requirements of SB X7-7 (Water Code, Division 6, Parts 2.55, 2.6, and 2.8) and other water management laws, and by implementing programs and projects which are locally cost effective and technologically feasible for urban and agricultural water suppliers to increase water use efficiency and conservation and diversify local water supply portfolios.</p> <p>(ea) Water shall not be exported from, transferred through, or used in the Delta if all of the following apply:</p> <p class="list-item-l1">(1) One or more water suppliers that would receive water as a result of the export, transfer or use have failed to adequately contribute to reduced reliance on the Delta and improved regional self-reliance consistent with all of the requirements listed in paragraph (1) of subsection (e);</p> <p class="list-item-l1">(2) That failure has significantly caused the need for the export, transfer or use; and</p> <p class="list-item-l1">(3) The export, transfer, or use would have a significant adverse environmental impact in the Delta.</p> <p>(db) For purposes of Water Code Section 85057.5(a)(3) and Section 5003(a)(5) of this Chapter, this policy covers a proposed action to export water from, transfer water through, or use water in the Delta.</p> <p>(ec)(1) Water suppliers that have done all of the following are contributing to reduced reliance on the Delta and improved regional self-reliance and are therefore consistent with this policy:</p> <p class="list-item-l2">(A) Completed a current Urban or Agricultural Water Management Plan <u>(Plan)</u>, which has been reviewed by the Department of Water Resources for compliance with the applicable requirements of Water Code Division 6, Parts 2.55, 2.6, and 2.8;</p> <p class="list-item-l2">(B) Identified, evaluated and commenced implementation, consistent with the implementation schedule set forth in the management planPlan, of all programs and projects <u>included in the Plan</u> that are locally cost effective and technically feasible which reduce reliance on the Delta; and,</p> <p class="list-item-l2">(C) Included in the planPlan, commencing in 2015, the expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance. <u>The expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance shall be reported in the Plan as the reduction in the amount of water used, or in the percentage of water used, from the Delta watershed. For the purposes of reporting, water efficiency is considered a new source of water supply, consistent with Water Code Section 1011(a).</u></p> <p class="list-item-l1">(2) Programs and projects that reduce reliance could include, but are not limited to, improvements in water use efficiency, water recycling, storm water capture and use, advanced water technologies, <u>groundwater</u> conjunctive use projects <u>involving various water supplies</u>, local and regional water supply <u>and storage</u> projects, and improved regional coordination of local and regional water supply efforts.</p> <p>NOTE: Authority cited: Section 85210(i), Water Code.</p> <p>Reference: Sections 10608, 10610.2, 10610.4, 10801, 10802, 85001(c), 85004(b), 85020(a), 85020(d), 85020(h), 85021, 85023, 85054, 85300, 85302(d), 85303, and 85304, Water Code.</p>	<ul style="list-style-type: none">• Delete subsections (a) and (b) to avoid confusion because these are broad statements of policy intent, not regulatory rules.• Edit subsection (c)(1) to improve clarity.• Edit subsection (c)(1)(B) to improve clarity.• Subsection (C) added to specify performance measures for demonstrating reduction in reliance on the Delta and improvement in regional self-reliance, and to specify a mechanism for reporting this information to the State.• Subsection (c)(2) amended to clarify that groundwater conjunctive use projects involving various water supplies and local and regional water storage are included in the list of programs and projects that reduce reliance.

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<p>Policy No. WR P2 – Improved Transparency in Water Contracting / §5006 §5004</p> <p><u>Summary of comments:</u> The Council received seven comments from six different stakeholders including the U.S. Bureau of Reclamation (USBR), the Department of Water Resources (DWR), other water agencies, and an environmental group.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">Five of the seven comments questioned the necessity of this regulation and asserted that the Council does not have the authority to enforce it. <p>Comments received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">DWR requested that the title of the regulation be modified because the regulation addresses existing state and federal transparency requirements.The USBR requested that the regulation be modified so that any future changes made to federal statutes would not conflict with or necessitate an amendment to future Delta Plan regulatory policies.	
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<p>(a) The contracting process for water from the State Water Project (SWP) and/or the Central Valley Project (CVP) must be done in a publicly transparent manner consistent with applicable polices of the Department of Water Resources and the Bureau of Reclamation referenced below.</p> <p>(b) For purposes of Water Code Section 85057.5(a)(3) and Section 5003(a)(5) of this Chapter, this policy covers the following:</p> <p>(1) With regard to water from the State Water Project, a proposed action to enter into or amend a water supply or water transfer contract subject to Department of Water Resources Guidelines 03-09 and/or 03-10 (each dated July 3, 2003), which are attached as Appendix 2A; and,</p> <p>(2) With regard to water from the Central Valley Project, a proposed action to enter into or amend a water supply or water transfer contract subject to Section 226 of P.L. 97-293, <u>as amended</u> or Section 3405(a)(2)(B) of the Central Valley Project Improvement Act, <u>Title XXXIV of Public Law 102-575, as amended</u>, which are attached as Appendix 2B, <u>and Rules and Regulations promulgated by the Secretary of the Interior to implement these laws.</u></p> <p>NOTE: Authority cited: Section 85210(i), Water Code.</p> <p>Reference: Sections 85020, 85021, 85300 and 85302, Water Code.</p>	<ul style="list-style-type: none">Staff concurs with DWR that this regulation is not intended to create new requirements. The policy is intended to provide a new incentive for compliance with the existing requirements. Staff recommends that the title of the regulation be changed.Staff recommends making the changes requested by USBR to ensure the language is consistent with CVP policy.
<p>Policy No. ER P1 - Update Delta Flow Objectives / §5007 §5005</p> <p><u>Summary of comments:</u> The Council received 30 comments from 18 different stakeholders including state agencies, local government agencies, water agencies/districts, Delta interest groups and environmental interest groups.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">Several stakeholders mostly water agencies, proposed that regulations be changed to direct the State Water Board to delay adoption of revised flow objectives until after the Bay Delta Conservation Plan is in place and until then, compliance with existing water rights should constituent compliance with the Delta Plan.Others, primarily environmental groups, recommended the regulation establish objectives for Delta flows that would require reductions in diversions from the Delta or its watershed. <p>Comments received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">Many stakeholders asserted that portions of the regulatory language in Section 5007 5005 (ER P1) were either explanatory or should be recommendations and should not be included as part of the regulation.Stakeholders expressed confusion regarding the type of proposed actions that “could affect flow in the Delta” and therefore subject to this regulation.	

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<p><u>Strikeout becomes a new Delta Plan Recommendation:</u></p> <p>(a) Development, implementation, and enforcement of new and updated flow objectives for the Delta and high priority tributaries are key to the achievement of the coequal goals. The State Water Resources Control Board should update the Bay Delta Water Quality Control Plan objectives as follows:</p> <p>(1) By June 2, 2014, adopt and implement updated flow objectives for the Delta that are necessary to achieve the coequal goals;</p> <p>(2) By June 2, 2018, adopt, and as soon as reasonably possible, implement flow objectives for high priority tributaries in the Delta watershed that are necessary to achieve the coequal goals; and,</p> <p>(3) For purposes of paragraph (2), State Water Resources Control Board staff will work with the Delta Stewardship Council and the Department of Fish and Game to determine priority streams. As an example, priority streams could include the Merced River, Tuolumne River, Stanislaus River, Lower San Joaquin River, Deer Creek (tributary to Sacramento River), Lower Butte Creek, Mill Creek (tributary to Sacramento River), Cosumnes River, and American River.</p> <p>(b) Flow objectives could be implemented through several mechanisms including negotiation and settlement, Federal Energy Regulatory Commission (“FERC”) relicensing, or water rights hearing. Implementation through water rights hearings or FERC relicensing is expected to take longer than the deadlines listed in paragraphs (1) and (2) of subsection (a).</p> <p>(ca) Prior to the establishment of revised flow objectives as described in subsections (a) and (b), the existing The State Water Resources Control Board’s Bay Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan. If and when the flow objectives are revised by the State Water Resources Control Board, After the flow objectives are revised, the revised flow objectives shall be used to determine consistency with the Delta Plan.</p> <p>(db) For purposes of Water Code Section 85057.5(a)(3) and Section 5003 5001(a)(5) of this Chapter, the policy set forth in subsection (c) covers a proposed action that could significantly affect flow in the Delta.</p> <p>NOTE: Authority cited: Section 85210(i), Water Code.</p> <p>Reference: Sections 85020, 85054, 85086, 85087, 85300 and 85302, Water Code.</p>	<ul style="list-style-type: none">• Delete Sections (a) and (b) because they are recommendations for action by another agency. The deleted language should become a new recommendation in the Delta Plan.• This section was edited for clarity due to the suggested deletions in sections (a) and (b).• The term “significantly” was added to clarify the intent of this regulation and the type of proposed action covered by this regulation. This regulation is intended to apply to proposed actions that could affect flow to the degree where compliance with flow objectives must be considered.
<p>Policy No. ER P2 – Restore Habitats at Appropriate Elevations / § 5008 § 5006</p> <p>Summary of comments:</p> <p>The Council received eight comments from six different stakeholders including a state agency, local government agencies, a water agency and Delta interest groups.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">• Stakeholders questioned the Council’s authority to promulgate the regulation.• Several stakeholders commented that this regulation interferes with local land use authority.• Stakeholders asserted that habitat restoration must be accomplished in a way that minimally impacts existing in-Delta uses, and any such restoration should focus on public lands.• Stakeholders commented that the regulation as written is in conflict with protection and enhancement of the unique cultural, recreational and agricultural values of the California Delta as an evolving place. <p>Comments received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">• The California Department of Fish and Wildlife recommended that section (a)of this proposed regulation reiterate the Delta Plan’s provision that if a proposed habitat restoration action is not consistent with Section II of the ERP Conservation Strategy (Appendix 3 to the proposed regulations) or the elevation map (Appendix 4 to the proposed regulations), it may nevertheless be approved with sufficient scientific rationale for such deviations.	

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<p>(a) Habitat restoration must be carried out consistent with Section II of the Draft Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions (Department of Fish and Game<u>Department of Fish and Wildlife</u> 2011), with minor alterations. It is hereby attached as Appendix 3. The elevation map attached as Appendix 4 should be used as a guide for determining appropriate habitat restoration actions based on an area’s elevation. <u>If a proposed habitat restoration action is not consistent with Appendix 4, the proposal shall provide rationale for the deviation based on best available science.</u></p> <p>(b) For purposes of Water Code Section 85057.5(a)(3) and Section 5003(a)(5) of this Chapter, this policy covers a proposed action that includes habitat restoration.</p> <p>NOTE: Authority cited: Section 85210(i), Water Code.</p> <p>Reference: Sections 85020, 85022, 85054, 85300 and 85302, Water Code.</p>	<ul style="list-style-type: none">Subsection (a) should be revised to state that proposals not consistent with Appendix 4 shall provide sufficient scientific rationale for such deviations.
<p>Policy No. ER P3 – Protect Opportunities to Restore Habitat / § 5009 § 5007</p> <p>Summary of comments: The Council received 13 comments from seven stakeholders including local government agencies, water agencies/districts, and Delta interest groups.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">Stakeholders asserted that this section is a “regulatory taking,” as it limits the future use of private property on certain areas.One stakeholder questioned the Council’s authority to promulgate the regulation.Several stakeholders stated that this regulation interferes with local land use authority. <p>Comments received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">Several stakeholders stated the need for greater clarity in this section regarding “adverse” impacts; clarifying that only adverse impacts need to be avoided or mitigated and how proponents might avoid a significant adverse impacts to an opportunity to restore habitat, and how mitigation, if necessary, would be determined.	
Staff Recommendation on Revisions to Proposed Regulations	Nature of Changes and Staff Rationale
<p>(a) <u>Within the priority habitat restoration areas depicted in Appendix 5, S</u>significant <u>adverse</u> impacts to the opportunity to restore habitat <u>at the elevations shown in Appendix 4</u> as described in Section 5008 5006, must be avoided or mitigated.</p> <p>(b)(1) Mitigation shall be determined, in consultation with the Department of Fish and Game, considering the size of the area impacted by the covered action and the type and value of habitat that could be restored on that area, taking into account existing and proposed restoration plans, landscape attributes, the elevation map shown in Appendix 4 and other relevant information about habitat restoration opportunities of the area.</p> <p>(2) Mitigation may include the restoration and/or permanent protection of other areas to provide habitats that could have been restored at the site.</p> <p><u>(b) Impacts will be deemed to be avoided if the project is designed and implemented so that it will not preclude or otherwise interfere with the ability to restore habitat as described in Appendix 3.</u></p> <p><u>(c) Mitigation shall be determined, in consultation with the Department of Fish and Wildlife, considering the size of the area impacted by the covered action and the type and value of habitat that could be restored on that area, taking into account existing and proposed restoration plans, landscape attributes, the elevation map shown in Appendix 4 and other relevant information about habitat restoration opportunities of the area.</u></p> <p>(c)<u>(d)</u> For purposes of Water Code Section 85057.5(a)(3) and Section 5003 5001(a)(5) of this Chapter, this policy covers proposed actions in the priority habitat restoration areas depicted in Appendix 5. It does not cover proposed actions outside those areas.</p>	<ul style="list-style-type: none">For clarity, revise this section to indicate only “adverse” impact need to be avoided or mitigated and how one might avoid a significant adverse impact to an opportunity to restore habitat, and how mitigation, if necessary, would be determined. Related definitions are offered in the Definitions (Section 5001).

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<p>NOTE: Authority cited: Section 85210(i), Water Code.</p> <p>Reference: Sections 85020, 85022, 85054, 85300, 85302 and 85305, Water Code.</p>	
<p>Policy No. ER P4 – Expand Floodplains and Riparian Habitats in Levee Projects / § 5010 § 5008</p> <p>Summary of comments: The Council received 10 comments on this section from nine different stakeholders, including local governments, water agencies and Delta interest groups.</p> <p>Comments received that do not result in staff recommended changes in this section: None</p> <p>Comments received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">Commenters asserted the Section is too broad in its requirement that all levee improvement projects be evaluated for setback levees, and expressed concerns about the cost and feasibility of evaluating and implementing such setbacks. They opined that only portions of the Delta are suitable for setback levees, and these areas can be broadly defined using information currently available.Some commenters objected to mentioning the prospective inclusion of criteria to be developed by DWR, in cooperation with other agencies at a later date.	
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<p><u>OPTION 1: Revise 5008 as shown below (Staff Preferred Option):</u></p> <p>(a) Levee projects must evaluate and where feasible incorporate alternatives, including the use of setback levees, to increase floodplains and riparian habitats. <u>Evaluation of setback levees shall only be required in the following areas (shown in Appendix 8): (1) The Sacramento River between Freeport and Walnut Grove, the San Joaquin River from the Legal Delta boundary to Mossdale, and Steamboat and Sutter Sloughs; and the salmonid migration channels in the interior Delta, such as the North and South Forks of the Mokelumne River, and (2) Urban levee improvement projects in the Stockton, West Sacramento, and Sacramento regions. When available and incorporated into this policy, criteria developed by the Department of Water Resources, in conjunction with the Central Valley Flood Protection Board, the Department of Fish and Game, and the Sacramento-San Joaquin Delta Conservancy—as recommended in Recommendation Number 7 of Chapter 7 of the Delta Plan—must be used to determine appropriate locations for setback levees for purposes of this policy.</u></p> <p>(b) For purposes of Water Code Section 85057.5(a)(3) and Section 5003 5001(a)(5) of this Chapter, this policy covers a proposed action to construct new levees or substantially rehabilitate or reconstruct existing levees.</p> <p><u>OPTION 2: Revise 5008 as shown below:</u></p> <p>(a) Levee projects must evaluate and where feasible incorporate alternatives, including the use of setback levees, to increase floodplains and riparian habitats. <u>When available and incorporated into this policy, criteria developed by the Department of Water Resources, in conjunction with the Central Valley Flood Protection Board, the Department of Fish and Game, and the Sacramento-San Joaquin Delta Conservancy—as recommended in Recommendation Number 7 of Chapter 7 of the Delta Plan—must be used to determine appropriate locations for setback levees for purposes of this policy.</u></p> <p>(b) For purposes of Water Code Section 85057.5(a)(3) and Section 5003 5001 (a)(5) of this Chapter, this policy covers a proposed action to construct new levees or substantially rehabilitate or reconstruct existing levees.</p> <p>NOTE: Authority cited: Section 85210(i), Water Code.</p> <p>Reference: Sections 85020, 85022, 85054, 85300, 85302 and 85305, Water Code.</p>	<ul style="list-style-type: none">Staff recommends only requiring Delta levee projects to evaluate the use of setback levees in areas where they are likely to improve Delta ecosystem functions, especially for anadromous fish. The areas identified as sites where the feasibility of setting back levees must be evaluated are based on plans for improving habitat for salmon and other anadromous fish, including the draft BDCP. Staff proposes to include a map in the Delta Plan and Regulatory Package to highlight opportunity areas for setback levee consideration within the Delta in the future. (see Attachment 6b2 Staff Report)Staff recommends deleting the reference to future criteria. Criteria developed by DWR may be considered for adoption into the Delta Plan.

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<p>Policy No. ER P5 – Avoid Introductions of and Habitat Improvements for Nonnative <u>Invasive</u> Species / § 5011 § 5009</p> <p>Summary of comments: The Council received two comments from two stakeholders including, a local government agency and one water agency.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">The San Joaquin County Board of Supervisors commented that this regulation interferes with local land use authority. <p>Comments received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">The Central Delta Water Agency requested clarification that the regulation is aimed at nonnative invasive species, not all nonnative species.	
Staff Recommendation on Revisions to Proposed Regulations	Nature of Changes and Staff Rationale
<p>(a) The potential for new introductions of, or improved habitat conditions for, nonnative invasive species must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem.</p> <p>(b) For purposes of Water Code Section 85057.5(a)(3) and Section 5003 5001(a)(5) of this Chapter, this policy covers a proposed action that has the reasonable probability of introducing, or improving habitat conditions for, nonnative invasive species.</p> <p>NOTE: Authority cited: Section 85210(i), Water Code.</p> <p>Reference: Sections 85020, 85022, 85054, 85300, and 85302, Water Code.</p>	<ul style="list-style-type: none">In response to the comment by the Central Delta Water Agency, the word “invasive” should be added to the title of the section. The proposed definition was taken from the Department of Fish and Wildlife’s 2008 <i>California Aquatic Invasive Species Management Plan</i>. A related definition of “non-native invasive species” is added to the Definitions (Section 5001).
<p>Policy No. DP P1 – Locate new <u>Urban</u> Development Wisely / § 5012 § 5010</p> <p>Summary of comments: The Council received 13 comments from nine stakeholders including, local government agencies, water agencies/districts and Delta interest groups.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">Stakeholders asserted a conflict with the jurisdiction of the Delta Protection Commission (DPC).One stakeholder commented on the potential for “takings” claims.A few stakeholders stated that this regulation interferes with local land use authority. <p>Comments received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">Several stakeholders requested clarification of the term “urban development” and the degree to which development outside the designated areas would be restricted under the proposed regulation.Sacramento County requested revisions of Appendix 7’s maps depicting the unincorporated Delta towns in its jurisdiction.	
Staff Recommendation on Revisions to Proposed Regulations	Nature of Changes and Staff Rationale
<p>(a) New urban residential, commercial, and industrial development, including residential, commercial, and industrial uses, must be limited to the following areas, as shown in Appendix 6 and Appendix 7:</p> <p>(1) Areas that city or county general plans as of the date of the Delta Plan’s adoption, designate for <u>residential, commercial, and industrial</u> development in cities or their spheres of influence;</p> <p>(2) Areas within Contra Costa County’s 2006 voter-approved urban limit line, except no new urban residential, commercial, and industrial development may occur on Bethel Island unless it is consistent with the Contra Costa County general plan effective as of the date of the Delta Plan’s adoption;</p> <p>(3) Areas within the Mountain House General Plan Community Boundary in San Joaquin County; or,</p> <p>(4) The unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove.</p> <p><u>(b) Notwithstanding subsection (a), new residential, commercial, and industrial development is permitted outside the areas described in subsection (a) if it is consistent with the land uses designated in county general plans as of the date of the Delta Plan’s adoption, and is otherwise consistent with this chapter.</u></p>	<ul style="list-style-type: none">In response to stakeholder requests for greater clarity in the regulation, this section should be revised to state that development outside the areas designated will be determined by the land use designations in county general plans effective as of the date of the adoption of the Delta Plan.Appendix 7’s maps (Appendix K in Delta Plan) depicting the unincorporated Delta towns in Sacramento County should be revised as shown in Attachment 6b3. Revisions regarding Hood, but not suggestions for Walnut Grove or Courtland, which proposed designations of sites not contiguous with these towns as part of the unincorporated town, or for Locke, where the county sought to include a large undeveloped site planned for commercial recreation as part of the unincorporated town. In addition, Appendix 7 maps for the cities of Tracy and Lathrop should be revised to reflect the most current General Plans for these cities.

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<p>(b)(c) For purposes of Water Code Section 85057.5(a)(3) and Section 5003 5001(a)(5) of this Chapter, this policy covers proposed actions that involve new <u>residential, commercial, and industrial</u> urban development, including residential, commercial, and industrial uses, that is not located within the areas described in subsection (a). In addition, this policy covers any such action on Bethel Island that is inconsistent with the Contra Costa County general plan effective as of the date of the Delta Plan’s adoption. This policy does not cover commercial recreational visitor-serving uses or facilities for processing of local crops or that provide essential services to local farms, which are otherwise consistent with this chapter.</p> <p>(d) This policy is not intended in any way to alter the concurrent authority of the Delta Protection Commission to separately regulate development in the Delta’s Primary Zone. NOTE: Authority cited: Section 85210(i), Water Code.</p> <p>Reference: Sections 85020, 85022, 85300, 85302, and 85305, Water Code.</p>	
<p>Policy No. DP P2 – Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitats / §5013 §5011</p> <p>Summary of comments: The Council received nine comments from five stakeholders including, a state agency and local government agencies.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">• The California Department of Fish and Wildlife suggested changing part of the policy to a recommendation.• Delta counties commented that this regulation interferes with local land use authority. <p>Comments received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">• The Solano County Department of Resource Management requested clarification of the term “planned uses.”	
<p>Staff Recommendation on Revisions to Proposed Regulations</p> <p>(a) Water management facilities, ecosystem restoration, and flood management infrastructure must be sited to avoid or reduce conflicts with existing <u>uses</u> or those planned uses <u>described or depicted in city and county general plans for their jurisdictions or spheres of influence</u> when feasible, considering comments from local agencies and the Delta Protection Commission. Plans for ecosystem restoration must consider sites on existing public lands, when feasible and consistent with a project’s purpose, before privately owned sites are purchased. Measures to mitigate conflicts with adjacent uses may include, but are not limited to, buffers to prevent adverse effects on adjacent farmland.</p> <p>(b) For purposes of Water Code Section 85057.5(a)(3) and Section 5003 5001(a)(5) of this Chapter, this policy covers proposed actions that involve the siting of water management facilities, ecosystem restoration, and flood management infrastructure.</p> <p>NOTE: Authority cited: Section 85210(i), Water Code.</p> <p>Reference: Sections 85020, 85022, 85054, 85300, and 85305, Water Code.</p>	<p>Nature of Changes and Staff Rationale</p> <ul style="list-style-type: none">• In response to the comment regarding greater clarity in the regulation, the staff recommends revising the regulation to refer to uses described or depicted in city and county general plans effective as of the date of the adoption of the Delta Plan.
<p>Policy No. RR P1 – Prioritization of State Investments in Delta Levees and Risk Reduction / §5014 §5012</p> <p>Summary of comment: The Council received 12 comments on this section from seven different stakeholders, including state agencies, local governments and water agencies.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">• Commenters advised the Council to coordinate its activities with DWR (this is occurring now) <p>Comment received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">• One commenter opined that subsections (a), (b) and (c) are unnecessary, and are more appropriate for internal Council guidance and/or Delta Plan language, because they are essentially an instruction to the Council to develop funding priorities for State investments in Delta levees rather than a rule governing a covered action.	

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<ul style="list-style-type: none">One commenter questioned the Council’s authority to develop funding priorities for Delta leveesOne commenter expressed concern about prioritizing levee improvement projects for areas where habitat restoration might occur.	
Staff Recommendation on Revisions to Proposed Regulations	Nature of Changes and Staff Rationale
<p>Strikeout becomes part of a new Delta Plan Recommendation:</p> <p>(a) The Delta Stewardship Council, in consultation with the Department of Water Resources, the Central Valley Flood Protection Board, the Delta Protection Commission, local agencies, and the California Water Commission, shall develop funding priorities for State investments in Delta levees by January 1, 2015. These priorities shall be consistent with the provisions of the Delta Reform Act in promoting effective, prioritized strategic State investments in levee operations, maintenance, and improvements in the Delta for both levees that are a part of the State Plan of Flood Control and non-project levees. Upon completion, these priorities shall be considered for incorporation into the Delta Plan and these regulations.</p> <p>(b) The priorities developed pursuant to subsection (a) shall identify guiding principles, constraints, recommended cost share allocations and strategic considerations to guide Delta flood risk reduction investments, supported by, at a minimum, the following actions to be conducted by the Department of Water Resources, consistent with available funding:</p> <p>(1) An assessment of existing Delta levee conditions. This shall include the development of a Delta levee conditions map based on sound data inputs, including, but not limited to, both of the following:</p> <p>(A) Geometric levee assessment; and,</p> <p>(B) Flow and updated stage frequency analysis.</p> <p>(2) An island-by-island economics-based risk analysis. This analysis shall consider, but not be limited to, values related to protecting all of the following:</p> <p>(A) Island residents/life safety;</p> <p>(B) Property;</p> <p>(C) Value of Delta islands’ economic output, including agriculture;</p> <p>(D) State water supply;</p> <p>(E) Critical local, State, federal, and private infrastructure, including aqueducts, state highways, electricity transmission lines, gas/petroleum pipelines, gas fields, railroads, and deepwater shipping channels;</p> <p>(F) Delta water quality;</p> <p>(G) Existing ecosystem values and ecosystem restoration opportunities;</p> <p>(H) Recreation; and,</p> <p>(I) Systemwide integrity.</p> <p>(3) An ongoing assessment of Delta levee conditions. This shall include a process for updating Delta levee assessment information on a routine basis.</p> <p>(c) The methodology described in subsection (b) shall provide the basis for the prioritization of State investments in Delta levees. It shall include, but not be limited to, the public reporting of all of the following items:</p> <p>(1) Tiered ranking of Delta islands based on economics-based risk analysis values;</p> <p>(2) Delta levee conditions status report, including a levee conditions map; and,</p> <p>(3)(1) Inventory of Delta infrastructure assets.</p> <p>(a) Prior to the completion and adoption of the updated priorities developed pursuant to Water Code Section 85306subsection (a), the interim</p>	<ul style="list-style-type: none">Subsections (a), (b) and (c) are not regulatory in nature, and are more appropriate as a new recommendation in the Delta Plan.

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priorities listed below shall, where applicable and to the extent permitted by law, guide discretionary State investments in Delta flood risk management. Key priorities for interim funding include emergency preparedness, response, and recovery as described in Paragraph (1), as well as Delta levees funding as described in Paragraph (2).

(1) Delta Emergency Preparedness, Response, and Recovery: Develop and implement appropriate emergency preparedness, response, and recovery strategies, including those developed by the Delta Multi-Hazard Task Force pursuant to Water Code Section 12994.5.

(2) Delta Levees Funding: The priorities shown in the following table are meant to guide budget and funding allocation strategies for levee improvements. ~~The State Legislature makes allocations to the Delta Levees Subventions Program, which because it funds local agency levee maintenance, is not a covered action.~~ The goals for funding priorities are all important, and it is expected that over time, the Department of Water Resources must balance achievement of those goals. Except on islands planned for ecosystem restoration, improvement of non-project Delta levees to the Hazard Mitigation Plan (HMP) standard may be funded without justification of the benefits. Improvements to a standard above HMP, such as that set by the U.S. Army Corps of Engineers under Public Law 84-99 (P.L. 84-99), may be funded as befits the benefits to be provided, consistent with the Department of Water Resource’s current practices and any future adopted investment strategy.

Priorities for State Investment in Delta Integrated Flood Management
Categories of Benefit Analysis

Goals	Localized Flood Protection	Levee Network	Ecosystem Conservation
1	Protect existing urban and adjacent urbanizing areas by providing 200-year flood protection.	Protect water quality and water supply conveyance in the Delta, especially levees that protect freshwater aqueducts and the primary channels that carry fresh water through the Delta.	Protect existing and provide for a net increase in channel- margin habitat.
2	Protect small communities and critical infrastructure of Statewide importance (located outside of urban areas).	Protect flood water conveyance in and through the Delta to a level consistent with the State Plan of Flood Control for project levees.	Protect existing and provide for net enhancement of floodplain habitat.
3	Protect agriculture and local working landscapes.	Protect cultural, historic, aesthetic, and recreational resources (Delta as Place).	Protect existing and provide for net enhancement of wetlands.

(b) For purposes of Water Code Section 85057.5(a)(3) and Section ~~5003~~ 5001(a)(5) of this Chapter, this policy covers a proposed action that involves discretionary State investments in Delta flood risk management, including levee operations, maintenance, and improvements. Nothing in this policy establishes or otherwise changes existing levee standards.

NOTE: Authority cited: Section 85210(i), Water Code.

Reference: Sections 85020, 85300, 85305 and 85306, Water Code.

- Subsection (a)(2) (as renumbered) stated that because the Delta Levees Subventions Program funds only levee maintenance, it is not a covered action. This may not be true in all cases, because the subventions program is also authorized to support levee improvements. Maintenance of non-project levees supported by the subventions program will nevertheless not be regulated as a covered action because it is exempt by Water Code Section 85057.5(b)(5) as “routine maintenance and operation of any facility...owned or operated by a local public agency.”

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<p>Policy No. RR P2 – Require Flood Protection for Residential Development in Rural Areas / § 5015 § 5013</p> <p>Summary of comments: The Council received seven comments on this section from five different stakeholders, including local governments and one Delta interest group.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">Commenters objected to this requirement, asserting that it exceeds the requirements of existing State law. <p>Comments received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">Some commenters asserted that neither FEMA nor the Department of Water Resources have prepared 200-year floodplain maps or elevations for rural areas in the Delta, which makes it unclear how the 200-year standard of the draft regulations could be applied.	
Staff Recommendation on Revisions to Proposed Regulations	Nature of Changes and Staff Rationale
<p>(a) New residential development of five or more parcels shall provide for a minimum of 200-year flood protection, such as through the use of adequate levees or flood proofing, if it be protected through floodproofing to a level 12 inches above the 100 year base flood elevation, plus sufficient additional elevation to protect against a 55-inch rise in sea level at the Golden Gate, unless the development is located within outside of:</p> <p>(1) Areas that city or county general plans, as of the date of the Delta Plan’s adoption, designate for development in cities or their spheres of influence;</p> <p>(2) Areas within Contra Costa County’s 2006 voter-approved urban limit line, except Bethel Island;</p> <p>(3) Areas within the Mountain House General Plan Community Boundary in San Joaquin County; or</p> <p>(4) The unincorporated Delta towns of Clarksburg, Courtland, Hood, Locke, Ryde, and Walnut Grove, as shown in Appendix 7.</p> <p>(b) For purposes of Water Code Section 85057.5(a)(3) and Section 5003(a)(5) of this Chapter, this policy covers a proposed action that involves new residential development of five or more parcels that is not located within the areas described in subsection (a).</p> <p>Note: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85300, 85305, and 85306, Water Code.</p>	<ul style="list-style-type: none">Revising this regulation clarifies the specific level of flood proofing required for new residential development outside of those Delta locations specified. Because 200 year flood elevations will not be available for the rural Delta, revising the regulation to be based upon the 100 year flood elevation plus planning for additional protection for sea level rise provides certainty to the regulated community. 55 inches of anticipated sea level rise is the recommendation of the California Ocean Protection Council’s 2011 Resolution on Sea Level Rise, which directs State agencies to consider sea level rise in planning efforts. The Delta Reform Act also refers to the 55 inch sea level rise figure for planning purposes related to the Bay Delta Conservation Plan (WC Sec. 85320). Proposed revisions to this regulation will shift the focus to flood proofing and remove building levees sufficient to protect against a 55 inch rise in sea level. Building such levees could have adverse environmental impacts that are not analyzed in the Delta Plan’s EIR. Related definitions are added to the Definitions (Section 5001).
<p>Policy No. RR P3 – Protect Floodways / § 5016 § 5014</p> <p>Summary of comments: The Council received six comments on this section from five different stakeholders, including Delta interest groups and County governments.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">Some commenters questioned using a definition derived from the CVFPB regulations, which define vegetation removal as an encroachment. <p>Comments received that staff recommends should be addressed by changes in this section:</p> <ul style="list-style-type: none">Many commenters asserted that the section is unclear as to how the Council’s regulation will interface with the jurisdictional authority of the Central Valley Flood Protection Board (CVFPB).	
Staff Recommendation on Revisions to Proposed Regulations	Nature of Changes and Staff Rationale
<p>(a) No encroachment shall be allowed or constructed permitted in a floodway, unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety.</p> <p>(b) For purposes of Water Code Section 85057.5(a)(3) and Section 5003 5001(a)(5) of this Chapter, this policy covers a proposed action that would encroach in a floodway: that is not either a designated floodway or regulated stream.</p> <p>NOTE: Authority cited: Section 85210(i), Water Code. Reference: Sections 85020, 85300, 85302 and 85305, Water Code.</p>	<ul style="list-style-type: none">Edited for clarity.Modify this language to acknowledge the CVFPB’s authority over “designated floodways” and “regulated streams”, and to focus the DSC regulation on floodways not regulated by the CVFPB. Related definitions are added to the Definitions (Section 5001).

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<p>Policy No. RR P4 – Floodplain Protection / § 5017 § 5015</p> <p>Summary of comments: Similar to RR P3 (Section 5014) the Council received 14 comments on this section from seven stakeholders, including Delta interest groups, water agencies and County governments.</p> <p>Comments received that do not result in staff recommended changes in this section:</p> <ul style="list-style-type: none">Some commenters questioned using a definition derived from the CVFPB regulations, which define vegetation removal as an encroachment.Many commenters noted that the section is unclear as to how the Council will interface with the jurisdictional authority of the Central Valley Flood Protection Board (CVFPB). <p>Comments received that staff recommends should be addressed by changes in this section</p> <ul style="list-style-type: none">Some commenters noted that the regulation refers to parts of the Yolo Bypass that lie outside the Delta.	
Staff Recommendation on Revisions to Proposed Regulations	Nature of Changes and Staff Rationale
<p>(a) No encroachment shall be allowed or constructed permitted in any of the following floodplains unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions:</p> <p>(1) Areas located in the Yolo Bypass from within the Delta, Fremont Weir through Cache Slough to the Sacramento River including the confluence of Putah Creek into the bypass;</p> <p>(2) The Cosumnes River-Mokelumne River Confluence, as defined by the North Delta Flood Control and Ecosystem Restoration Project (McCormack-Williamson), or as modified in the future by the Department of Water Resources or the U.S. Army Corps of Engineers (Department of Water Resources 2010a); and,</p> <p>(3) The Lower San Joaquin River Floodplain Bypass area, located on the Lower San Joaquin River upstream of Stockton immediately southwest of Paradise Cut on lands both upstream and downstream of the Interstate 5 crossing. This area is described in the Lower San Joaquin River Floodplain Bypass Proposal, submitted to the Department of Water Resources by the partnership of the South Delta Water Agency, the River Islands Development Company, Reclamation District 2062, San Joaquin Resource Conservation District, American Rivers, the American Lands Conservancy, and the Natural Resources Defense Council, March 2011. This area may be modified in the future through the completion of this project.</p> <p>(b) For purposes of Water Code Section 85057.5(a)(3) and Section 5003 <u>5001</u>(a)(5) of this Chapter, this policy covers a proposed action that would encroach in any of the floodplain areas described in subsection (a).</p> <p>(c) This policy is not intended to exempt any activities in any of the areas described in subsection (a) from applicable regulations and requirements of the Central Valley Flood Protection Board.</p> <p>NOTE: Authority cited: Section 85210(i), Water Code.</p> <p>Reference: Sections 85020, 85300, 85302 and 85305, Water Code.</p> <p>Article 4. General Provisions.</p>	<ul style="list-style-type: none">Edited for clarity.Modify this language to acknowledge the geographical extent of the floodplains within the Delta that the proposed regulation covers.

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II. DEFINITIONS	
Definitions / §5002 and §5003 merged with § 5001	
Summary of comments: The Council received 61 comments from 26 different stakeholders including, state agencies, local government agencies, water agencies/districts, Delta interest groups and environmental interest groups. Comments received that do not result in staff recommended changes in this section: N/A	
Staff recommends that the following comments should be addressed by changes in this section: <ul style="list-style-type: none">Many stakeholders expressed concern about the 2014 sunset date for the proposed exemption of single-year water transfers from the covered action process. Most stakeholders urged the Council to exempt all single-year water transfers from the covered actions process. In addition, some stakeholders asserted that subjecting single-year water transfers to the covered action process could add 150 days (if the water transfer certification of consistency is appealed to the Council) to the process for initiating and completing a water transfer.Stakeholders expressed confusion regarding proposed definition of a covered action, in particular to the proposed administrative exemptions.Several stakeholders expressed concern that the Council’s partial CEQA exemption was not entirely consistent with CEQA’s categorical and statutory exemptions. Some stakeholders claimed the Council’s requirement for environmental review for some CEQA exempt projects created conflicts with CEQA. Other stakeholders questioned inclusion of the term “unless there are unusual circumstances” when discussing CEQA exemptions.One stakeholder suggested the Council does not have the authority to add any exemptions to the definition of a covered action and objected to all the Council’s administrative exemptions.Several stakeholders noted that in Section 5003 5001 subsection (ff) (Definitions) “Significant Impact” included an incorrect reference to Section 5003 5001(u), the definition “floodway”, instead of Section 5003 5001(ff), the definition of “Significant Impact”.One stakeholder requested clarification that Section 5011 5009 (ER P5) is aimed at nonnative invasive species, not all nonnative species, some of which may be desirable.Staff also received numerous unique stakeholder-specific comments.	
Staff Recommendation on Revisions to Proposed Regulations	Nature of Changes and Staff Rationale
As used in this division, the terms listed below shall have the meanings noted: (a) “Adaptive management” means a framework and flexible decision making process for ongoing knowledge acquisition, monitoring, and evaluation leading to continuous improvement in management planning and implementation of a project to achieve specified objectives. (b) “Agricultural water management plan” means a plan prepared, adopted, and updated by an agricultural water supplier pursuant to the Agricultural Water Management Planning Act, Water Code Section 10800 et seq. (c) “Agricultural water supplier” refers to both “agricultural retail water suppliers” and “agricultural wholesale water suppliers” under the Water Code, but not the Department of Water Resources <u>or the United States Bureau of Reclamation</u> , and includes both of the following: (1) A water supplier, either publicly or privately owned, providing water to 10,000 or more irrigated acres, excluding recycled water; and, (2) A water supplier or contractor for water, regardless of the basis of the water right, that distributes or sells water for ultimate resale to customers. (d) “Base Flood” means the flood that has a 1-percent probability of being equaled or exceeded in any given year (also referred to as the 100-year flood).	<ul style="list-style-type: none">Clarification of definition’s application to USBR. Term is used in Section 5013 (RR P2)

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<p><u>(e) “Base Flood Elevation” (BFE) means the water surface elevation associated with the base flood.</u></p> <p>{d}(f) “Best available science” means the best scientific information and data for informing management and policy decisions. <u>Best available science shall be consistent with the guidelines and criteria found in Appendix 1A.</u> Best available science has all of the following attributes:</p> <p>{1} It is specific to the decision being made and the time frame available for making that decision; and,</p> <p>{2} It is consistent with the scientific process, including the following elements:</p> <p><u>{A} Well stated objectives;</u></p> <p><u>{B} A clear conceptual or mathematical model;</u></p> <p><u>{C} A good experimental design with standardized methods for data collection;</u></p> <p><u>{D} Statistical rigor and sound logic for analysis and interpretation; and,</u></p> <p><u>{E} Clear documentation of methods, results, and conclusions.</u></p> <p>{3} It is developed and applied in a manner that meets all of the following criteria:</p> <p><u>{A} Relevance;</u></p> <p><u>{B} Inclusiveness;</u></p> <p><u>{C} Objectivity;</u></p> <p><u>{D} Transparency and Openness;</u></p> <p><u>{E} Timeliness; and,</u></p> <p><u>{F} Peer Review.</u></p> <p>A more detailed description of best available science, along with guidelines and criteria for identifying or developing best available science, is hereby attached as Appendix 1A.</p> <p><u>(g) “Central Valley Flood Protection Board” or “Board” means the Central Valley Flood Protection Board (formerly The Reclamation Board) of the California Resources Agency of the State of California as provided in Water Code Section 8521.</u></p> <p>(g)(h) “Coequal goals” means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.</p> <p>In addition, “achievement” for <u>these respective purposes the purpose of determining whether a plan, program, or project meets the definition of a "covered action" under Section 5003(a)(4)</u> is further defined as follows:</p> <p><u>{1} “Achieving the coequal goal of providing a more reliable water supply for California” means all of the following:</u></p>	<ul style="list-style-type: none">• Term is used in Section 5013 (RR P2)• Technical revision. Deleted information is included in Appendix A of Delta Plan.• New definition related to revised sections 5016 <u>5014</u> (RR P3) and 5017 <u>5015</u> (RR P4).• Edited for clarity.
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<p>(A) Better matching the state’s demands for reasonable and beneficial uses of water to the available water supply. This will be done by promoting, improving, investing in, and implementing projects and programs that improve the resiliency of the state’s water systems, increase water efficiency and conservation, increase water recycling and use of advanced water technologies, improve groundwater management, expand storage, and improve Delta conveyance and operations. The evaluation of progress toward improving reliability will take into account the inherent variability in water demands and supplies across California;</p> <p>(B) Regions that use water from the Delta watershed will reduce their reliance on this water for reasonable and beneficial uses, and improve regional self-reliance, consistent with existing water rights and the State’s area of origin statutes and Reasonable Use and Public Trust Doctrines. This will be done by improving, investing in, and implementing local projects and programs that increase water conservation and efficiency, increase water recycling and use of advanced water technologies, expand storage, improve groundwater management, and enhance regional coordination of local and regional water supply development efforts; and,</p> <p>(C) Water exported from the Delta will more closely match water supplies available to be exported, based on water year type and consistent with the coequal goal of protecting, restoring, and enhancing the Delta ecosystem. This will be done by improving conveyance in the Delta and expanding groundwater and surface storage both north and south of the Delta to optimize diversions in wet years when more water is available and conflicts with the ecosystem less likely, and limit diversions in dry years when conflicts with the ecosystem are more likely. Delta water that is stored in wet years will be available for water users during dry years, when the limited amount of available water must remain in the Delta, making water deliveries more predictable and reliable. In addition, these improvements will decrease the vulnerability of Delta water supplies to disruption by natural disasters, such as, earthquakes, floods, and levee failures.</p> <p>(2) “Achieving the coequal goal of protecting, restoring, and enhancing the Delta ecosystem” means successfully establishing a resilient, functioning estuary and surrounding terrestrial landscape capable of supporting viable populations of native resident and migratory species with diverse and biologically appropriate habitats, functional corridors, and ecosystem processes.</p> <p>(3) “Achieving the coequal goals in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place” means accepting that change, including change associated with achieving the coequal goals, will not cease, but that the fundamental characteristics and values that contribute to the Delta’s special qualities and that distinguish it from other places can be preserved and enhanced while accommodating these changes. In this regard, the following are core strategies for protecting and enhancing the unique values that distinguish the Delta and make it a special region:</p> <p>(A) — Designate the Delta as a special place worthy of national and state attention;</p> <p>(B) — Plan to protect the Delta’s lands and communities;</p> <p>(C) — Maintain Delta agriculture as a primary land use, a food source, a key economic sector, and a way of life;</p> <p>(D) — Encourage recreation and tourism that allow visitors to enjoy and appreciate the Delta and that contribute to its economy;</p> <p>(E) — Sustain a vital Delta economy that includes a mix of agriculture, tourism, recreation, commercial and other industries, and vital components of state and regional infrastructure; and,</p> <p>(F) — Reduce flood and other risks to people, property, and other interests in the Delta.</p> <p>(i) “Commercial recreational visitor-serving uses” means a land use designation that describes visitor serving uses, accommodations, restaurants, and shops, that respect the rural character and natural environmental setting. These uses also include campgrounds and commercial recreational facilities.</p>	<ul style="list-style-type: none">• Conforming revision. Sections 1, 2 and 3 now consistent. Deleted information is included in the Delta Plan.
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(j) "Covered action" means a plan, program, or project that meets all of the following criteria (which are collectively referred to as covered action screening criteria):

- (1) Is a "project," as defined pursuant to Section 21065 of the Public Resources Code;
- (2) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;
- (3) Will be carried out, approved, or funded by the state or a local public agency;
- (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta; and,
- (5) Is covered by one or more provisions of the Delta Plan, which for these purposes, means one or more of the regulatory policies contained in Article 3.

(k) "Covered action" does not include any plan, program, or project that is exempted pursuant to Water Code Section 85057.5(b) of the following:

(1) A plan, program, or project that is exempted pursuant to Water Code Section 85057.5(b);

(2) A plan, program, or project that is exempted pursuant to one or more of the following administrative exemptions, as listed in Chapter 2 of the Delta Plan, because they will not have a significant impact under Water Code Section 85057.5(a)(4), as further defined by Section 5001(s) of this Chapter:

(A) "Ministerial" projects exempted from CEQA, pursuant to Public Resources Code Section 21080(b)(1);

(B) "Emergency" projects exempted from CEQA, pursuant to Public Resources Code Section 21080(b)(2)-(4);

(C) Temporary water transfers of up to one year in duration. This exemption shall remain in effect only through December 31, 2014, and as of January 1, 2015, is repealed, unless the Council acts to extend the exemption prior to that date. The Council contemplates that any extension would be based upon the Department of Water Resources and the State Water Resources Control Board's participation with stakeholders to identify and implement transfer measures, as recommended in the Delta Plan's Water Resources Recommendation Number 15;

(D) Other projects exempt from CEQA statutes or guidelines, unless there are unusual circumstances indicating a reasonable possibility that the project will have a significant impact under Water Code Section 85057.5(a)(4), as further defined by Section 5001(s) of this Chapter. Examples of unusual circumstances could arise in connection with, among other things:

(ii) Local government general plan amendments for the purpose of achieving consistency with the Delta Protection Commission's Land Use and Resource Management Plan; and,

(jj) Small-scale habitat restoration projects, as referred to in CEQA Section 15333, proposed in important restoration areas, but which are inconsistent with the Delta Plan's policy related to appropriate habitat restoration for a given land elevation (Section 5008 of this Chapter);

A state or local public agency that proposes to carry out, approve, or fund a plan, program, or project that may be subject to this chapter must determine whether that proposed plan, program, or project is a covered action. That determination, which is subject to judicial review, must be reasonable, made in good faith, and consistent with the Delta Reform Act and this chapter.

- Revisions to clarify intent of this subsection. Delete language from this section and move to subsection (cc) – "Significant Impacts" where it is more appropriately placed.

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<p><u>Nothing in the application of the definition of a “covered action” shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law.</u></p> <p>(l) “Delta” means the Sacramento-San Joaquin Delta as defined in Section 12220 of the <u>Water Code Section</u> and the Suisun Marsh, as defined in Section 29101 of the Public Resources Code.</p> <p>(m) “Delta Plan” means the comprehensive, long-term management plan for the Delta to further the achievement of the coequal goals, as adopted by the Delta Stewardship Council in accordance with the Sacramento-San Joaquin Delta Reform Act of 2009.</p> <p>(n) <u>“Designated Floodway” means those floodways, as defined in 23 CCR Sec 4 (i), under the jurisdiction of the Central Valley Flood Protection Board.</u></p> <p>(o) “Encroachment” means any obstruction or physical intrusion by construction of works or devices, planting or removal of vegetation, or by any means for any purpose, into or otherwise affecting a floodway or floodplain.</p> <p>(p) “Enhancement” or “enhancing”, for purposes of Section 5001(e)(2), means improving existing desirable habitat and natural processes. Enhancement may include, by way of example, flooding the Yolo Bypass more often to support native species or to expand or better connect existing habitat areas. Enhancement includes many fish and wildlife management practices, such as managing wetlands for waterfowl production or shorebird habitat, installing fish screens to reduce entrainment of fish at water diversions, or removing barriers that block migration of fish to upstream spawning habitats.</p> <p>(q) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.</p> <p>(r) “Floodplain” means any land area susceptible to being inundated by flood waters from any source.</p> <p>(s) “Floodplain values and functions” has the same meaning as set forth in 33 Code of Federal Regulations Section 320.4(l)(1).</p> <p><u>(t) “Floodproofing” means any combination of structural and nonstructural additions, changes or adjustments appropriate for residential structures, which reduce or eliminate risk of flood damage to real estate, improved real property, or structures with their contents.</u></p> <p>(t)<u>(u)</u> “Floodway” means the portion of the floodplain that is effective in carrying flow (that is, the channel of a river or other watercourse and the adjacent land areas that convey flood waters.)</p> <p>(u)<u>(v)</u> “Government-sponsored flood control program to reduce risks to people, property , and State interests in the Delta” means any state or federal strategy, project, approval, funding, or other effort that is intended to reduce the likelihood and/or consequences of flooding of real property and/or improvements, including risks to people, property, and State interests in the Delta, that is carried out pursuant to applicable law, including, but not limited to the following:</p> <p>(1) State Water Resources Law of 1945, Water Code Section 12570 et seq.;</p> <p>(2) Sacramento-San Joaquin River Flood Control Projects (Flood Control Act of 1941, P.L. 77-228);</p> <p>(3) Local Plans of Flood Protection <u>prepared pursuant to the Local Flood Protection Planning Act (Water Code sec. 8200 et seq.), that are consistent with the Central Valley Flood Protection Plan pursuant to Water Code Section 9612.</u> (Water Code Section 8201);</p>	<ul style="list-style-type: none">• Reiterates an important provision of the Delta Reform Act’s covered action definition (Water Code Section 85057.5(c)).• Technical revision.• New definition related to Section 5016 <u>5014</u> (RR P3).• Term is used in Section 5015 <u>5013</u> (RR P2)• Clarification regarding requirements for local plans.
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<p>(4) Central Valley Flood Protection Plan (Water Code Section 9600 et seq.);</p> <p>(5) Subventions Program, Special Projects Program (Water Code Section 12300 et seq.);</p> <p>(6) Way Bill 1973-Subventions Program, Special Projects Program (Water Code Section 12980 et seq.);</p> <p>(7) Central Valley Flood Protection Board Authority (California Code of Regulations, Title 23, Division 1); and,</p> <p>(8) National Flood Insurance Program (National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., P.L. 90-448).</p> <p><u>(w) “Nonnative invasive species”, for purposes of Section 5011 5009, means species that establish and reproduce rapidly outside of their native range and may threaten the diversity or abundance of native species through competition for resources, predation, parasitism, hybridization with native populations, introduction of pathogens, or physical or chemical alteration of the invaded habitat.</u></p> <p><u>(x) “Non-project levee” means a local levee owned or maintained by a local agency or private owner that is not a project facility under the State Water Resources Law of 1945. (Chapter 1 (commencing with Section 12570) and Chapter 2 (commencing with Section 12639 of Part 6 of the Water code).</u></p> <p><u>(y) “Project levee” means a federal flood control levee that is a project facility under the State Water Resources Law of 1945 Chapter 1 (commencing with Water Code Section 12570) and Chapter 2 (commencing with Section 12639 of Part 6).</u></p> <p><u>(z) “Proposed action” means a plan, program, or project that meets the covered action screening criteria listed in Section 5003(a)(1) through (4).</u></p> <p><u>(aa) Proposed action is also a “covered action”, and therefore, subject to compliance with the regulatory policies contained in Articles 2 and 3—if the proposed action meets the covered action screening criterion listed in Section 5003(a)(5).</u></p> <p><u>(bb) “Protection” or “protecting”, for purposes of Section 5001(e)(2), means preventing harm to the ecosystem, which could include preventing the conversion of existing habitat, the degradation of water quality, irretrievable conversion of lands suitable for restoration, or the spread of invasive nonnative species.</u></p> <p><u>(cc) “Regulated stream” means those streams identified in Table 8.1 of 23 CCR sec. 112, under the jurisdiction of the Board.</u></p> <p><u>(dd) “Restoration” or “restoring,” for purposes of Section 5001(e)(2), has the same meaning as in Water Code Section 85066. Restoration actions may include restoring interconnected habitats within the Delta and its watershed, restoring more natural Delta flows, or improving ecosystem water quality.</u></p> <p><u>(ee) “Setback levee” means a new levee constructed behind an existing levee which allows for removal of a portion of the existing levee and creation of additional floodplain connected to the stream. In the Delta, a “setback levee” may not necessarily result in removal of the existing levee.</u></p> <p><u>(ff) “Significant Impact” for purpose of determining whether a project meets the definition of a “covered action” under Section 5003(a)(4), means a substantial positive or negative impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and state interests in the Delta, that is directly or indirectly caused by a project on its own or when the project’s incremental effect is considered together with the impacts of other closely-related past, present, or reasonably foreseeable future projects.</u></p> <p>“Significant impact” means a change in baseline conditions that is directly or indirectly caused by a project and that, on its own, or when considered “cumulatively” in connection with the effects of past projects, other current projects, and probable future projects, will have a substantial impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta. The substantial impact may be positive (for example, an ecosystem restoration action that would provide benefits to endangered fish species), negative (for example, a water management action that would result in the pollution of Delta waters or</p>	<ul style="list-style-type: none">• Clarification. The proposed definition was taken from the Department of Fish and Wildlife’s 2008 <i>California Aquatic Invasive Species Management Plan</i>.• New definition necessary to distinguish between non-project and project levees.• New definition necessary to distinguish between non-project and project levees.• Edited for clarity.• Edited for clarity.• New definition related to Section 5016 <u>5014</u> (RR P3).• Revisions to clarify intent of section.
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<p>increase the risk of introducing harmful nonnative species), or both positive and negative (for example, a flood protection action that would remove vegetation on levees in an effort to strengthen them, but in so doing, would also reduce riparian habitat critical to recovery of native fish species).</p> <p><u>The following categories of projects will not have a significant impact for this purpose:</u></p> <p>(1) <u>“Ministerial” projects exempted from CEQA, pursuant to Public Resources Code Section 21080(b)(1);</u></p> <p>(2) <u>“Emergency” projects exempted from CEQA, pursuant to Public Resources Code Section 21080(b)(2)-(4);</u></p> <p><u>There are three options for category (3) as shown below:</u></p> <p>(3) <u>Temporary water transfers of up to one-year in duration. This exemption shall remain in effect only through December 31, 2014, and as of January 1, 2015, is repealed, unless the Council acts to extend the exemption prior to that date. The Council contemplates that any extension would be based upon the Department of Water Resources and the State Water Resources Control Board’s participation with stakeholders to identify and implement transfer measures, as recommended in the Delta Plan’s Water Resources Recommendation Number 15;</u></p> <p><u>(3)(a) Temporary water transfers of up to one-year in duration. This exemption shall remain in effect only through December 31, 2015, and as of January 1, 2016, is repealed, unless the Council acts to extend the exemption prior to that date. The Council contemplates that any extension would be based upon the Department of Water Resources and the State Water Resources Control Board’s participation with stakeholders to identify and implement transfer measures, as recommended in the Delta Plan’s Water Resources Recommendation Number 15;</u></p> <p><u>(3)(b) Temporary water transfers of up to one-year in duration. This exemption shall remain in effect only through December 31, 2015, and as of January 1, 2016, is repealed, unless the Council acts to extend the exemption prior to that date. The Council contemplates that any extension would be based upon the Department of Water Resources and the State Water Resources Control Board’s participation with stakeholders to identify and implement transfer measures, as recommended in the Delta Plan’s Water Resources Recommendation Number 15;</u></p> <p>(4) Other projects that are exempted under from CEQA statutes or guidelines, unless there are unusual circumstances indicating <u>a reasonable possibility</u> that the project will<u>may</u> have a significant impact under Water Code Section 85057.5(a)(4), as further defined by Section 5001(s) of this Chapter. Examples of unusual circumstances could arise in connection with, among other things:</p> <p>(i) Local government general plan amendments for the purpose of achieving consistency with the Delta Protection Commission’s Land Use and Resource Management Plan; and,</p> <p>(ii) Small-scale habitat restoration projects, <u>as referred to in CEQA Section 15333</u>, proposed in important restoration areas, but which are inconsistent with the Delta Plan’s policy related to appropriate habitat restoration for a given land elevation (Section 5008 of this Chapter).</p> <p>(gg) “Urban area” means a developed area in which there are 10,000 residents or more.</p> <p>(hh) “Urbanizing area” means a developed area or an area outside of a developed area that is planned or anticipated to have 10,000 residents or more within the next 10 years.</p> <p>(ii) “Urban water management plan” means a plan prepared, adopted, and updated by an urban water supplier pursuant to the Urban Water Management Planning Act, Water Code Section 10610 et seq.</p> <p>(jj) “Urban water supplier” refers to both “urban retail water suppliers” and “urban wholesale water suppliers”:</p>	<ul style="list-style-type: none">• Definitional criteria more appropriately placed within definition itself.• Based on comments received staff have developed three proposed revisions to subsection 3 listed. Staff preferred option is 3(b) – extend sunset date by one year.• If either Option 3a or 3b is selected, it will strengthen related Delta Plan recommendation WR R15 (Improve Water Transfers) to charge the Delta Stewardship Council to convene the agencies and stakeholders meeting to recommend improved water transfer procedures.• Edited for clarity.• Technical revision.
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<p>(1) “Urban retail water supplier” means a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annual at retail for municipal purposes.</p> <p>(2) “Urban wholesale water supplier” means a water supplier, either publicly or privately owned, that provides more than 3,000 acre-feet of potable water annually at wholesale for municipal purposes.</p> <p>(kk) “Water supplier” refers to both “urban water suppliers” and “agricultural water suppliers”, but for purposes of Section 5005, does not include agricultural water suppliers during the time that they may be exempted by Section 10853 of the Water Code from the requirements of Parts 2.55 and 2.8 of Division 6 of the Water Code.</p> <p>NOTE: Authority cited: Section 85210(i), Water Code.</p> <p>Reference: Sections 85057.5, 85059, 85058, 85066, 85020, 85054, 85052, 85302(g), 85308, 85300, and 10608.12, Water Code.</p>	
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III. MISCELLANEOUS PROVISIONS	
Miscellaneous Provisions / § 5018, 5019 and 5020 merged to § 5016	
Summary of comments: None	
Staff Recommendation on Revisions to Proposed Regulations	Nature of Changes and Staff Rationale
<p>§ 5018, 5019 and 5020 is merged together as § 5016 Miscellaneous Provisions</p> <p>(a.) Just Compensation. The provisions in this Chapter are not intended and shall not be construed as authorizing the Delta Stewardship Council or any entity to exercise its power in a manner that will take or damage private property for public use without the payment of just compensation.</p> <p><u>NOTE: Authority cited: Section 85210(i), Water Code.</u></p> <p>(b.) Property Owner Rights The provisions in this Chapter are not intended to affect the rights of any owner of property under the Constitution of the State of California or the United States.</p> <p><u>NOTE: Authority cited: Section 85210(i), Water Code.</u></p> <p>(c.) No increase in State’s flood liability The provisions in this Chapter shall not increase the State’s flood liability.</p> <p><u>NOTE: Authority cited: Sections 85032(j) and 85210(i), Water Code.</u></p>	